

Ong Siew Hwa v UMW Toyota Motor Sdn Bhd

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO
A-02-1777-08 OF 2013
LINTON ALBERT, ROHANA YUSUF AND VERNON ONG JJCA
9 SEPTEMBER 2014

Contract — Agreement — Hire purchase agreement — Whether after execution of hire purchase agreement between purchaser and finance company there remained any contractual relationship between car dealer and purchaser — Whether purchaser claim against first respondent dealer

The appellant bought a car from the first respondent for RM151,706.45. The appellant paid RM71,706.45 towards the purchase price and the balance of RM80,000 was financed by the second respondent, a finance company under a hire purchase agreement. The appellant found the new car to be defective and made numerous complaints to the first respondent. The first respondent's attempts to resolve the problems were unsuccessful. This led to the appellant leaving the car at the first respondent's service centre. The appellant then filed an action against the respondents for termination of the contract of sale and breach of implied guarantees as to acceptable quality under the Consumer Protection Act 1999 ('the CPA') and the Sale of Goods Act 1957 ('the SGA'). The trial judge found that once the hire purchase agreement came into effect there ceased to be any contractual relationship between the appellant and the first respondent. Thus, the trial judge allowed the appellant's claim against the second respondent but dismissed the appellant's claim against the first respondent. Hence the present appeal wherein the appellant argued that the trial judge had erred in his finding that the appellant had no claim against the first respondent.

Held, dismissing the appeal with costs:

- (1) Regardless of whether the appellant's claim was founded on the CPA or the SGA, the appellant had to cross the threshold of establishing that he had a contractual relationship with the car dealer in order to found the claim. The ratio decidendi of the Federal Court in *Ahmad Ismail v Malaya Motor Company & Anor* [1973] 2 MLJ 66 was quite clear in establishing that any contractual relationship between the appellant and a car dealer would be extinguished, once the appellant entered into a hire purchase agreement with the finance company. As such, the appellant's claim against the first respondent was unsustainable (see paras 15–17 & 21).

- A (2) Although the essential factual matrix in *Ahmad Ismail's* case was similar to *Heng Long Motor Trading Co v Osman bin Abdullah* [1994] 2 MLJ 456, the latter case had not followed the legal principle in *Ahmad Ismail's* case. This court did not agree with the decision taken in the *Heng Long's* case (see paras 15–16).

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[Bahasa Malaysia summary]

- C Perayu membeli kereta daripada responden pertama dengan harga M151,706.45. Perayu membayar RM71,706.45 kepada harga belian dan baki RM80,000 dibiayai oleh responden kedua, syarikat kewangan di bawah perjanjian sewa beli. Perayu mendapati kereta baru adalah cacat dan membuat beberapa aduan kepada responden pertama. Percubaan responden pertama untuk menyelesaikan masalah tidak berjaya. Ini membawa kepada perayu meninggalkan kereta di pusat servis responden pertama. Perayu kemudiannya
- D memfailkan tindakan terhadap responden-responden untuk penamatan kontrak jualan dan kemungkiran jaminan tersirat terhadap kualiti boleh diterima di bawah Akta Perlindungan Pengguna 1999 ('APP') dan Akta Jualan Barangan 1957 ('AJB'). Hakim bicara mendapati bahawa sebaik sahaja perjanjian sewa beli berkuat kuasa apa-apa hubungan kontraktual antara
- E perayu dan responden pertama tamat. Oleh itu, hakim bicara membenarkan tuntutan perayu terhadap responden kedua tetapi menolak tuntutan perayu terhadap responden pertama. Maka rayuan ini di mana perayu berhujah bahawa hakim bicara tersilap dalam dapatannya bahawa perayu tidak dapat menuntut terhadap responden pertama.

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Diputuskan, menolak rayuan dengan kos:

- G (1) Tanpa menghiraukan sama ada tuntutan perayu berdasarkan atas APP atau AJB, perayu melampaui ambang pembuktian bahawa dia mempunyai hubungan kontraktual dengan peniaga kereta untuk mendapatkan tuntutan. *Ratio decidendi* Mahkamah Persekutuan dalam kes *Ahmad Ismail v Malaya Motor Company & Anor* [1973] 2 MLJ 66 adalah jelas dalam membuktikan bahawa apa-apa hubungan kontraktual di antara perayu dan peniaga kereta akan lenyap, sebaik sahaja perayu
- H memasuki perjanjian sewa beli dengan syarikat kewangan. Dengan itu, tuntutan perayu terhadap responden pertama tidak boleh bertahan (lihat perenggan 15–17 & 21).
- I (2) Walaupun fakta matriks asas dalam kes *Ahmad Ismail* sama seperti kes *Heng Long Motor Trading Co v Osman bin Abdullah* [1994] 2 MLJ 456, kes *Heng Long* tidak mengikuti prinsip undang-undang dalam kes *Ahmad Ismail*. Mahkamah tidak bersetuju dengan keputusan yang dibuat di dalam kes *Heng Long* (lihat perenggan 15–16).]

Notes

For cases on agreement in general, see 3(3) *Mallal's Digest* (5th Ed, 2015) paras 3255–3345.

Cases referred to

Ahmad Ismail v Malaya Motor Company & Anor [1973] 2 MLJ 66, FC (distd)
Fiman Plastics Industries Sdn Bhd v Zaitun Industries Sdn Bhd [2003] 4 MLJ 258, HC (distd)

Heng Long Motor Trading Co v Osman bin Abdullah [1994] 2 MLJ 456, HC (not folld)

Matang Plastik & Metal Work Industries Sdn Bhd & Ors v Daimler Chrysler (M) Sdn Bhd & Ors [2014] 6 MLJ 244, CA (distd)

Perfect Kam Hung Sdn Bhd v Cheah Tai Hoe & Anor [2011] 9 MLJ 593, HC (distd)

Puncak Niaga (M) Sdn Bhd v NZ Wheels Sdn Bhd [2012] 1 MLJ 27; [2011] 9 CLJ 833, CA (distd)

Legislation referred to

Consumer Protection Act 1999 s 47

Hire-Purchase Act 1967

Sale of Goods Act 1893 [UK]

Sale of Goods Act 1957 ss 14 16

Appeal from: Civil Case No 22–25–06 of 2011, High Court of Taiping.

M Mathialagan (Lizawati bt Salamon with him) (Madhi Param & Co) for the plaintiff.

Jasmeetpal Singh (Siew & Jasmeet, Kamar) for the respondent.

Vernon Ong JCA:

INTRODUCTION

[1] In this appeal, the plaintiff in the court below is dissatisfied with the decision of the learned judicial commissioner ('the JC') in dismissing his claim against the first defendant for termination of the contract of sale, the return of the purchase price, general and special damages for breach of implied guarantees as to acceptable quality under the Consumer Protection Act 1999 ('the CPA 1999') and the Sale of Goods Act 1957 ('the SGA 1957').

[2] On 9 September 2014, after hearing of counsel and perusing the written submissions filed and the appeal record, we dismissed the plaintiff's appeal. We now provide the grounds of our decision.

A BRIEF ACCOUNT OF THE SALIENT FACTS

B [3] In 2010, the plaintiff purchased a new motor car from UMW Toyota Motor Sdn Bhd ('the first defendant') for RM151,706.45. The plaintiff paid RM71,706.45 towards the purchase price. The balance of the purchase price of RM80,000 was settled by Toyota Capital Malaysia Sdn Bhd ('the second defendant') pursuant to a hire-purchase agreement ('HPA') entered into between the plaintiff and the second defendant.

C [4] The fact that the new motor car was defective when it was delivered to the plaintiff is not really in issue. The plaintiff made numerous complaints to the first defendant, the first of which was made on 22 March 2010 when the plaintiff took delivery of the motorcar. The first defendant's attempts at resolving the mechanical problems of the motorcar were unsuccessful and the problems persisted. On 8 December 2010 the exasperated plaintiff left the motorcar at the first defendant's Ipoh Service Centre.

D [5] At the conclusion of the trial, the learned JC dismissed the plaintiff's claim against the first defendant. The plaintiff's claim against the second defendant was allowed.

E SUBMISSION OF PARTIES*The plaintiff's submission*

F [6] Learned counsel for the plaintiff argued that there is a consumer and supplier relationship between the plaintiff and the first defendant under the CPA 1999. As a consumer, the plaintiff has a reasonable expectation that the motorcar would be of acceptable quality fit for its purpose and devoid of defects.

G [7] Learned counsel also argued that the learned JC made a correct finding that the plaintiff is a consumer under the CPA 1999. However, the learned JC erred in holding that the second defendant is the supplier. The learned JC ought to have found that the first defendant was a supplier under the CPA 1999 (*Puncak Niaga (M) Sdn Bhd v NZ Wheels Sdn Bhd* [2012] 1 MLJ 27; [2011] 9 CLJ 833; *Matang Plastik & Metal Work Industries Sdn Bhd & Ors v Daimler Chrysler (M) Sdn Bhd & Ors* [2014] 6 MLJ 244; *Heng Long Motor Trading Co v Osman bin Abdullah* [1994] 2 MLJ 456).

H [8] Learned counsel for the plaintiff also argued that there was a sale transaction between the plaintiff and the first defendant when the plaintiff purchased the motor car from the first defendant. As such, the contract of sale

of the motor car is governed by the SGA 1957 so that the implied warranty as to quiet possession of the motorcar and implied conditions as to quality or fitness would apply (ss 14 and 16 of the SGA 1957; *Perfect Kam Hung Sdn Bhd v Cheah Tai Hoe & Anor* [2011] 9 MLJ 593; *Fiman Plastics Industries Sdn Bhd v Zaitun Industries Sdn Bhd* [2003] 4 MLJ 258).

The first defendant's submission

[9] Learned counsel for the first defendant argued that with the existence of the HPA between the second defendant and the plaintiff, there was no contract of sale and no privity of contract between the plaintiff and the first defendant.

[10] Once the HPA came into effect, there ceased to be any contractual relationship between the plaintiff and the first defendant (*Ahmad Ismail v Malaya Motor Company & Anor* [1973] 2 MLJ 66 (FC)). As there was no contract of sale in law between the plaintiff and the first defendant, the plaintiff could not found a claim for termination of a contract of sale against the first defendant. The fact that the plaintiff had paid the initial deposit of RM5,000 and a part-payment of RM66,706.45 to the first defendant did not mean that in law he purchased the motor car from the first defendant. The learned JC was correct in disregarding the SGA 1957 as against the first defendant.

[11] Learned counsel for the first defendant also argued that the second defendant was the supplier of the motorcar within the meaning of the CPA 1999. The CPA 1999 preserves and recognises the concept of hire purchase (s 47 of the CPA 1999). As such, the plaintiff's recourse and remedy for the alleged breaches is against the second defendant which supplied the motor car to the plaintiff under the HPA.

DECISION

[12] This appeal centres on one issue. It is this: whether the plaintiff's claim against the first defendant under the CPA 1999 and the SGA 1957 is sustainable as the motorcar was supplied by the second defendant under a hire-purchase agreement.

[13] In *Ahmad Ismail v Malaya Motor Company & Anor*, the appellant agreed to buy a second-hand motor car from the first respondent ('the car dealer') for RM4,900. The appellant traded-in his own car for which he was given a credit of RM1,200 and paid a deposit of RM1,000. The appellant entered into a hire-purchase agreement with the second respondent ('the finance company') in respect of the balance purchase price. Under the hire-purchase agreement, the finance company was referred to as the 'owners' of the motorcar and the appellant as the 'hirer'. Subsequently, the motor car was detained by the police

A on suspicion that it had been stolen. The appellant sued both the car dealer and the finance company for breach of contract. The appellant's claim was dismissed in the sessions court and his appeal to the High Court was also dismissed. The question before the Federal Court was framed as follows: after the execution of the hire-purchase agreement between the appellant and the
B finance company did there remain any contractual relationship between the appellant and the car dealer so that the appellant has a claim against him? The Federal Court held that the documents evidencing the sale of the motor car by the car dealer to the appellant were superseded by the hire-purchase agreement; and that from the language of the hire-purchase agreement it is plain that the
C car dealer completely faded out of the picture and the only contract that remained then was between the appellant and the finance company. As such, the appellant has no claim against the first respondent car dealer.

[14] In *Heng Long Motor Trading Co v Osman bin Abdullah*, the customer
D bought a van from the dealer for RM13,500. He paid a deposit of RM5,500 and the balance of RM8,000 was financed by Affin Credit (M) Sdn Bhd, a finance company under a hire-purchase agreement. Upon full settlement of the payments under the hire-purchase agreement, the registration card of the van was returned to the customer. Subsequently, the van was seized by the Royal
E Customs and Excise Department on the ground that it was material evidence in a customs case under investigation regarding its import. The customer and the finance company sued the dealer for breach of the implied condition of the dealer's right to sell and give possession and sole and exclusive use and benefit of the van. The trial magistrate held, inter alia, that there was a sale and
F purchase agreement, though not in writing, between the customer and the dealer, which had not been cancelled out by the hire-purchase agreement and that there had been a breach of the implied warranty of quiet possession of the van. The trial magistrate then awarded RM10,811.10 to the customer against the dealer with costs. The dealer's appeal to the High Court was dismissed. The
G learned judge held that there had been a sale of the van by the dealer to the customer. The learned judge found that this was not a case where the finance company bought the van by paying the dealer the purchase in full and then let it on hire-purchase to the customer. Instead, it was a case where the customer having paid the deposit, was unable to settle the balance on his own and had to
H seek a loan from the finance company for the purchase. The learned judge held that *Ahmad Ismail's* case is not applicable on two main grounds. First, the Federal Court's decision did not hold that there was no sale between the car dealer and the plaintiff in that case. The Federal Court held that there was such a sale but it was ultimately superseded by the hire-purchase agreement between the plaintiff and the finance company and accordingly ruled that the plaintiff's
I claim against the car dealer failed. Secondly, the plaintiff relied on the Hire-Purchase Act 1967 whereas in the instant case, the plaintiff relied on the Sale of Goods Act 1893 [UK] though the Act was not specifically pleaded as such.

[15] With respect, we do not agree with the decision of the learned judge in *Heng Long Motor's* case. Whilst the facts in *Ahmad Ismail's* case may be slightly different, the essential factual matrix is the same. In both cases, the customer paid a deposit and part payment towards the purchase price of the motor vehicle. In both cases, the customer entered into a hire-purchase agreement with a finance company to finance the purchase. What is important to discern from *Ahmad Ismail's* case is the legal principle that once a hire-purchase agreement has been entered into between the customer and the finance company, the dealer drops out of the picture altogether. The only contract that subsisted was between the customer and the finance company. The contractual relationship between the customer and the dealer, such as existed at the outset, has been superseded and no longer exists; in other words, the contractual relationship between the customer and the dealer no longer exists.

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[16] We do not think that the fact that the plaintiff in *Ahmad Ismail's* case relied on the HPA 1967 whereas the customer in *Heng Long Motor's* case relied on the on the Sale of Goods Act 1893 [UK] is a distinguishing factor. In our view, the question goes to capacity; whether the plaintiff has the contractual right to sue the car dealer in the first place.

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[17] Regardless of whether the plaintiff's claim is founded on the CPA or the SGA 1957, the plaintiff must cross the threshold of establishing that he has a contractual relationship with the car dealer in order to found the claim. The ratio decidendi of the Federal Court in *Ahmad Ismail's* case is quite clear. Once the plaintiff has entered into the hire-purchase agreement with the finance company, any contractual relationship between the plaintiff and the car dealer has been extinguished; the legal effect of which is that the plaintiff has no claim against the car dealer.

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[18] In *Puncak Niaga (M) Sdn Bhd v NZ Wheels Sdn Bhd*, the customer purchased a new motorcar from a car dealer. The customer sued the car dealer for breach of implied conditions and guarantees under the CPA 1999. In *Matang Plastik & Metal Work Industries Sdn Bhd & Ors v Daimler Chrysler (M) Sdn Bhd & Ors*, the customer purchased a new car and sued the car dealer and authorised importer and distributor for breach of implied guarantee as to acceptable quality under the CPA 1999. In both cited cases, the motor cars were purchased directly from the dealer; there was no hire-purchase agreements involved. As such, the cases are distinguishable on the facts and of no aid to the appellant's arguments.

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[19] Similarly, the facts in *Fiman Plastics Industries Sdn Bhd v Zaitun Industries Sdn Bhd* are also distinguishable as the claim was related to the issue of merchantable quality and fitness for purpose of plastic bottles.

- A [20] In *Perfect Kam Hung Sdn Bhd v Cheah Tai Hoe & Anor*, the purchase of a tipper lorry was subject to a financing arrangement, but the finance company terminated the hire-purchase agreement at the seller's request. The tipper lorry was returned to the seller by the buyer. The High Court found that the lorry was not safe and roadworthy and fit for the purpose intended. The seller was
- B ordered to refund the deposit and part-payment paid by the buyer to the seller and pay the repair costs. The case is also distinguishable on the facts as the hire-purchase agreement was apparently terminated and the contractual relationship between the buyer and seller was resurrected thereafter so as to
- C found an action by the buyer against the seller. We also note that Ahmad Ismail's case was not considered in that case and that the learned judge may have decided otherwise if it had been considered.

- D [21] For the foregoing reasons, the plaintiff's claim against the first defendant is unsustainable. There is no contractual relationship between the plaintiff and the first defendant to found the basis of the claim under the CPA 1999 and or the SGA 1957. Accordingly, the appeal was dismissed with costs.

Appeal dismissed with costs.

- E Reported by Kohila Nesan

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